

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

SUSAN A. UNRUH,

Plaintiff,

v.

MERCK & CO., INC., a New Jersey  
corporation,

Defendant.

Case No. C07-5314FDB

ORDER DENYING VOLUNTARY  
DISMISSAL WITHOUT PREJUDICE

On June 25, 2007 the Plaintiff, filed a complaint initiating this case. Plaintiff alleges personal injuries from taking Fosamax, a drug manufactured by Defendant. On July 2, 2007, the Clerk advised both Houston counsel listed on the Complaint of the need to associate local counsel in this district and to make application to appear pro hac vice. On July 16, 2007, counsel filed a "Voluntary Motion/Notice of Dismissal Without Prejudice" stating that she no longer seeks to prosecute her individual claims against Defendant Merck & Co., Inc.

On July 31, 2007, counsel appeared for Merck, and filed a response to the Motion for Dismissal without prejudice. Merck argues that because Plaintiff's counsel has neither been admitted pro hac vice nor has local counsel been associated, and, therefore, the voluntary dismissal is ineffective. Moreover, Merck points out that this case has been included on a Conditional Transfer


1 Order to be transferred to *In re Fosamax Products Liability Litigation*, MDL 1789 and that  
2 dismissal would prevent the proper transfer of this case to MDL 1789. Additionally, Merck states  
3 that “upon information and belief” on or about July 16, 2007, Plaintiff filed an identical action in the  
4 United States District Court for the District of New Jersey (Trenton) bearing cause number C07-  
5 3285(JAP), notwithstanding that Plaintiff represented in this case that she “no longer seeks to  
6 prosecute her individual claims against Defendant Merck & Co., Inc.” Documentation submitted by  
7 Merck indicates that this case was indicated as a “tag-along” action to the Fosamax litigation, and  
8 that a conditional transfer order to MDL 1789 has been entered, and that Plaintiff has not opposed  
9 the transfer.

10 No appearance or response to Merck’s opposition has been filed by Plaintiff, although  
11 Plaintiff’s counsel have been served.

12 Under the circumstances, dismissal of this case would not be appropriate, in order that this  
13 matter be transferred to MDL 1789.

14 ACCORDINGLY, IT IS ORDERED: Plaintiff’s “Voluntary Notice [Motion] for Dismissal  
15 Without Prejudice [Dkt. # 3] is DENIED.

16 DATED this 8<sup>th</sup> day of August, 2007.

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19 FRANKLIN D. BURGESS  
UNITED STATES DISTRICT JUDGE